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WILLIAMS MULLEN 222 CENTRAL PARK AVENUE SUITE 1700 VIRGINIA BEACH, VA 23462				FISCHER, ANDREW J
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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte JONG-UK CHOI, WON-HA LEE, JUNG-SEOK CHO,
WAN-HO JANG,
and
JI-SUN SEO

Appeal 2009-001188
Application 10/034,485
Technology Center 3600

Decided:¹ May 29, 2009

Before HUBERT C. LORIN, ANTON W. FETTING, and
BIBHU R. MOHANTY, *Administrative Patent Judges.*

LORIN, *Administrative Patent Judge.*

DECISION ON APPEAL

¹ The two-month time period for filing an appeal or commencing a civil action, as recited in 37 C.F.R. § 1.304, begins to run from the decided date shown on this page of the decision. The time period does not run from the Mail Date (paper delivery) or Notification Date (electronic delivery).

STATEMENT OF THE CASE

Jong-Uk Choi, et al. (Appellants) seek our review under 35 U.S.C. § 134 of the final rejection of claims 24-26 and 39. We have jurisdiction under 35 U.S.C. § 6(b) (2002).

This appeal is related to appeals in Application Serial No. 10/375,181, which has not yet been assigned an Appeal Number, and Application Serial No. 10/136,584, which is Appeal No. 2009-007272.

SUMMARY OF DECISION

We AFFIRM.²

THE INVENTION

The invention is a digital information security system.

A user application tool installed in a user terminal creates a unique user key using unique system information of the user terminal. A data storage unit stores user information and digital information. A user management tool installed in a server, receives the unique user key created by the user application tool, stores the received unique user key in the data storage unit as part of the user information, and compares, during user authentication, the stored unique user key with a unique user key provided from the user application tool of a user currently being subjected to authentication.

² Our decision will make reference to the Appellants' Appeal Brief ("App. Br.," filed Nov. 27, 2007) and Reply Brief ("Reply Br.," filed Apr. 28, 2008), and the Examiner's Answer ("Answer," mailed Feb. 26, 2008).

(Abstract.)

Claim 24, reproduced below, is illustrative of the subject matter on appeal.

24. A method for providing security, the method comprising:

creating a unique user key using system information of a user terminal; and

transmitting digital information and user information including the unique user key to a server system via a network, wherein the unique key is transmitted by a user application tool installed in the user terminal for authentication.

THE REJECTION

The Examiner relies upon the following as evidence of unpatentability:

Fransdonk US 2006/0210084 A1 Sep. 21, 2006

The following rejection is before us for review:

1. Claims 24-26 and 39 are rejected under 35 U.S.C. § 102(e) as being anticipated by Fransdonk.

ARGUMENTS

The Appellants argue that the Examiner has not provided any indication as to how the Examiner is interpreting the cited paragraphs of Fransdonk to read on the elements of claim 24. App. Br. 4-5. The Appellants contend that it is unclear whether the Examiner is citing the unique user key, public key, or the encrypted unique user key of Fransdonk as the claimed unique key and whether the Examiner is citing the conditional

access agent 28 or the secure device 46 of Fransdonk as the claimed user terminal. Reply Br. 4.

The Appellants further argue Fransdonk fails to describe “transmitting of digital information and user information including a unique user key, which is created using system information of a user terminal, to a server system, where the unique user key is transmitted by a user application tool installed in the user terminal.” App. Br. 10, emphasis original. For example, the Appellants argue that if the Examiner is reading the unique user key of Fransdonk as the claimed unique user key and the conditional access agent 28 as the user terminal, then Fransdonk does not anticipate claim 24 since Fransdonk does not specifically indicate that the unique user key generated by the conditional access agent 28 is created using system information of conditional access agent 28. App. Br. 5. If the Examiner is reading the unique user key of Fransdonk as the claimed unique user key and the secure device 46 as the user terminal, then Fransdonk does not anticipate since Fransdonk does not describe the secure device 46 transmitting the unique user key.

The Appellants do not provide any separate arguments for dependent claims 25, 26, and 39, but instead relies upon the arguments made for independent claim 24. App. Br 10.

The Examiner maintains that claim 24 is anticipated by Fransdonk and states, “Fransdonk generates a unique user key utilizing system information of a user terminal (public key of the secure device), as recited in claim 24.” Ans. 5. The Examiner also contends that paragraph [0221] teaches that the conditional access client distributes the unique user key to the client via a secure authorization channel. Ans. 6.

ISSUE

The issue is:

- 1) Does Fransdonk describe the steps of creating a unique user key using system information of a user terminal and transmitting digital information and user information including the unique key to a server system via a network, wherein the unique key is transmitted by a user application tool installed in the user terminal for authentication as recited in claim 24?

FINDINGS OF FACT

We find that the following enumerated findings of fact (FF) are supported by at least a preponderance of the evidence. *Ethicon, Inc. v. Quigg*, 849 F.2d 1422, 1427 (Fed. Cir. 1988) (explaining the general evidentiary standard for proceedings before the Office).

Claim construction

1. Claim 24 recites a method including the step of “creating a unique user key using system information of a user terminal.”
2. Claim 24 also recites the step of “transmitting digital information and user information including the unique user key to a server system via a network, wherein the unique user key is transmitted by a user application tool installed in the user terminal for authentication.”
3. The Specification does not contain a definition of “information.”
4. The definition of “information” is “a signal or character (as in a communication system or computer) representing data.” (See

Merriam-Webster's Collegiate Dictionary 599 (10th Ed.
1998.)(Entry for “information.”)

Fransdonk

5. Fransdonk describes a method of securely storing and distributing content encryption keys. Fransdonk [0002].
6. Fransdonk describes a content distributor 20 having a conditional access agent 28. Fransdonk [0047].
7. Fransdonk describes a content destination 22 having a secure device 46 and the conditional access client 48. Fransdonk [0051].
8. Fransdonk describes the conditional access agent 28 generating a unique user key. Fransdonk [0202].
9. Fransdonk describes encrypting the unique user key with a public key of the secure device 46. Fransdonk [0202].
10. Fransdonk describes the content distributor 20 transmitting encrypted content, an encrypted product key, and the encrypted unique user key to the content destination 22. Fransdonk [212].
11. Fransdonk describes a content consumer at the content destination decrypting the unique user key and using the unique user key to decrypt the product keys and the content. Fransdonk [0213].
12. Fransdonk states in paragraph [0369]:

[f]urthermore, it is common in the art to speak of software, in one form or another (e.g., program, procedure, process, application, module, logic...), as taking an action or causing a result. Such expressions are merely a shorthand way of saying that execution of the software by a machine, such as the computer system 700, to perform an action or produce a result.

PRINCIPLES OF LAW

Claim Construction

During examination of a patent application, a pending claim is given the broadest reasonable construction consistent with the specification and should be read in light of the specification as it would be interpreted by one of ordinary skill in the art. *In re Am. Acad. of Sci. Tech Ctr.*, 367 F.3d 1359, 1364 (Fed. Cir. 2004).

[W]e look to the specification to see if it provides a definition for claim terms, but otherwise apply a broad interpretation. As this court has discussed, this methodology produces claims with only justifiable breadth. *In re Yamamoto*, 740 F.2d 1569, 1571 (Fed. Cir. 1984). Further, as applicants may amend claims to narrow their scope, a broad construction during prosecution creates no unfairness to the applicant or patentee. *Am. Acad.*, 367 F.3d at 1364.

In re ICON Health and Fitness, Inc., 496 F.3d 1374, 1379 (Fed. Cir. 2007). Limitations appearing in the specification but not recited in the claim are not read into the claim. *E-Pass Techs., Inc. v. 3Com Corp.*, 343 F.3d 1364, 1369 (Fed. Cir. 2003).

Anticipation

“A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” *Verdegaal Bros., Inc. v. Union Oil Co. of Cal.*, 814 F.2d 628, 631 (Fed. Cir. 1987).

ANALYSIS

The rejection of claims 24-26 and 39 under § 102(e) as anticipated by Fransdonk.

The Appellants argued claims 24-26 and 39 as a group (App. Br. 10). We select claim 24 as the representative claim for this group, and the remaining claims 25, 26, and 39 stand or fall with claim 24. 37 C.F.R. § 41.37(c)(1)(vii) (2007).

We begin by construing claim 24. Anticipation is determined by first construing the claims and then comparing the properly construed claims to the prior art. *In re Cruciferous Sprout Litigation*, 301 F.3d 1343, 1346 (Fed. Cir. 2002). Claim 24 recites, “creating a unique user key using system information of a user terminal.” FF 1. The Specification does not define “information.” FF 3. We find the definition of “information” to be a signal or character (as in a communication system or computer) representing data. FF 4. Therefore, we construe claim 24 to require creating a unique user key using knowledge obtained from the instructions on the system of the user terminal.

We find that the unique user key U_k of Fransdonk reads on the claimed unique user key and the conditional access agent 28 reads on the claimed user terminal. Fransdonk describes the conditional access agent 28 generating the unique user key U_k (FF 8) but is silent as to whether the unique user key U_k is generated using system information of the conditional access agent. Under principles of inherency, when a reference is silent about an asserted inherent characteristic, it must be clear that the missing descriptive matter is necessarily present in the thing described in the

reference, and that it would be so recognized by persons of ordinary skill. *Continental Can Co. v. Monsanto Co.*, 948 F.2d 1264, 1268 (Fed. Cir. 1991). We find that the conditional access agent must use system information, as we have construed the term above, of the conditional access agent to generate the unique user key U_k . The conditional access agent must include and use software, which contains characters representing data, to generate the unique user key otherwise the unique user key would not exist. See FF 12. Further, we find that Fransdonk expressly describes transmitting the unique user key using the conditional access agent. FF 10.

Therefore, we find that Fransdonk anticipates claim 24. Accordingly, we find that the Appellants have not shown that the Examiner erred in rejecting claims 24, and claims 25, 26, and 39 dependent thereon, under 35 U.S.C. § 102(e) as anticipated by Fransdonk.

CONCLUSIONS OF LAW

We conclude that the Appellants have not shown that the Examiner erred in rejecting claims 24-26 and 39 under 35 U.S.C. § 102(e) as anticipated by Fransdonk.

DECISION

The decision of the Examiner to reject claims 24-26 and 39 is affirmed.

Appeal 2009-001188
Application 10/034,485

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv) (2007).

AFFIRMED

hh

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